

**REMARKS**

In the Office Action mailed October 22, 2003, the Examiner allowed Claims 19-25 and rejected Claims 1-18, 26 and 27. The foregoing amendment amends Claims 1, 15 and 26. In light of the amendments and remarks below, a notice of allowance is requested for all pending claims.

**Crawley Does Not Describe, Teach or Suggest the Invention  
of Independent Claims 1 and 26**

The Examiner rejected Claim 1 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,953,312 to *Crawley et al.* ("*Crawley*") and rejected Claim 26 under 35 U.S.C. §103(a) as being unpatentable over *Crawley* in view of U.S. Patent No. 6,047,331 to *Medard et al.* ("*Medard*").

The systems and methods described in *Crawley* are limited to those using a connection-based protocol. *See e.g.* Column 1, lines 9-12. As described in connection with Figure 2 of *Crawley*, a connection request message is propagated through all the nodes of the path (or alternate path). *See e.g.* Column 4, lines 5-42. Thus, *Crawley* requires that each node that is part of the path (or alternate path) participate in the path selection process. If an acceptable path cannot be located, then a connection refusal signal is propagated back to the source node indicating that the requested Quality of Service (QoS) is not available. Column 2, line 66 – Column 3, line 2.

In contrast, Claim 1 requires monitoring the traffic service level associated with one of the plurality of paths between the source and the destination and Claim 26 requires computer code to monitor the traffic service level associated with one of the plurality of paths between the source and the destination. The traffic service level is monitored using passive flow analysis by receiving, without interfering with, network communication data. Specification, page 10, line 13. Thus, *Crawley* teaches away from the claimed invention because *Crawley* requires that each node in the path

handle a connection request and participate in the path set-up, whereas the claimed invention uses passive flow analysis to monitor a path.

The claimed invention also requires different mechanisms for monitoring one of the paths and selecting an alternate path. Passive flow analysis is used to monitor one of the paths, whereas an active mechanism is used to select an alternate path. Claim 1 requires using an active mechanism to select an alternate path from the other of the plurality of paths between the source and the destination and Claim 26 requires computer code to select an alternate path from the other of the plurality of paths between the source and the destination using an active mechanism. *Crawley* does not describe the use of two different mechanisms for monitoring a path and selecting an alternate path. *Crawley* only describes the use of connection requests. Moreover, the systems and methods described in *Crawley* are limited to considering alternate paths that pass through nodes that neighbor the receiving node. See e.g. Column 2, lines 56-59.

In rejecting Claim 26, the Examiner alleged that *Medard* describes transmitting probes. However, the cited section of *Medard* describes that a processor receives information describing the network that typically includes information about the number of nodes and links, information about traffic load, and information identifying which of the paths are available to connect particular ones of the nodes and the nodes and links which should be used to re-route signals in the event of a failure. The cited section of *Medard* does not describe that an active mechanism is used to select an alternate path, as required by Claims 1 and 26.

Furthermore there is no motivation to combine the references in the manner suggested by the Examiner. *Crawley* does not describe or suggest that the network information described in *Medard* could be used with the connection requests of *Crawley*. Even if the references are combined, the references do not describe the use of passive flow analysis to monitor a path in connection with an active mechanism to select an alternate path, as required by the claims.

**Bertin Does Not Describe, Teach or Suggest the Invention of  
Independent Claim 15**

The Examiner rejected Claim 15 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,400,681 to *Bertin et al.* ("*Bertin*"). In rejecting Claim 15, the Examiner cited Column 7, lines 24-30. The cited section of *Bertin* describes routing data packets according to information contained in the header of the data packets. In contrast, Claim 15 requires parsing the one or more data packets to determine performance metrics associated with the selected path, not to route the data packets as described in *Bertin*.

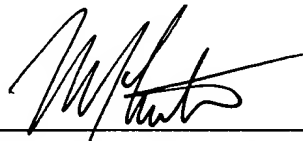
Claim 15 also requires that the one or more data packets are received, without interfering with the data packet(s). The cited section of *Bertin* only teaches a method of receiving a data packet for the purpose of routing—which requires interfering with—the data packet.

Moreover, the claimed invention determines an alternate path using aggregate service levels. The systems and methods described in the cited section of *Bertin* do not teach or describe monitoring one or more data packets to determine performance metrics nor do they teach or suggest determining an alternate path using aggregate service levels.

**CONCLUSION**

In light of the foregoing, it is respectfully requested that the rejection of Claims 1-18, 26 and 27 be withdrawn. It is submitted that the application is in condition for allowance and a notice of allowance is respectfully requested. If there are any issues that can be resolved via a telephone conference, the Examiner is invited to contact the undersigned at 404.685.6799.

Respectfully submitted,



Michael J. Turton, Reg. No.: 40,852  
ATTORNEY FOR ASSIGNEE

KILPATRICK STOCKTON LLP  
1100 Peachtree Street  
Suite 2800  
Atlanta, Georgia 30309-4530  
Phone: (404) 815-6500  
KS File: 52224/294510